

POSSIBLE Z.B.A. REFERRAL:

YONKERS CONTRACTING CO., INC. LOT LINE CHANGE (02-11)

Mr. Richard Carter and Paul D. Sirignano, Esq. appeared before the board for this proposal.

MR. CARTER: Our parcel constitutes this area here and across, the current lot line cuts across in this fashion and then I am creating an L-shape and our intention is to bring this across here and down, therefore creating this as a larger parcel and this as the secondary parcel.

MR. PETRO: Two questions right off. One would be you're creating a new lot line so your rear yard setback is 15 feet, Mark, in this zone?

MR. EDSALL: No, his rear is 22.4 that he's providing. The 15.5 is a side yard.

MR. PETRO: Secondly, the use of this building, what are you going to be doing with this building?

MR. CARTER: Currently that's a maintenance structure for this facility.

MR. PETRO: Once you create the new lot, what zone is this in, Mike?

MR. BABCOCK: PI zone, Mr. Chairman.

MR. PETRO: So my question is is this use in this building going to continue to be permitted use in that zone on the new lot?

MR. BABCOCK: No, that's why he needs a referral to the ZBA, as far as we we're concerned, Mr. Chairman, at the present location with the complete operation, it would be an accessory use to the operation and we feel that's not a problem but standing on its own now it's no longer an accessory to something.

MR. PETRO: So what kind of relief are you going to be

looking for?

MR. CARTER: Use variance.

MR. PETRO: Use variance, no other way to get around a use variance? What other--that's about it, right?

MR. BABCOCK: Not to continue that use.

MR. EDSALL: There's no problem with the lot line change if a permitted use was established in that lot, number one, but to continue that use that's where the problem is developed.

MR. PETRO: We can still do a lot line change if the building became vacant and then whoever went in the building had to conform with the PI zone, we can certainly do that.

MR. CARTER: Can you still do a lot line change considering we own both parcels, if we were to divest ourselves of this, we would then not be able to operate until we had a variance.

MR. PETRO: That's a little more messy, I think we should we should do it in order.

MR. EDSALL: Difficulty comes in if you approve the lot line change without sending it to the ZBA. The instant the lot line change is in effect, the building inspector has no choice but to issue a violation so this is a little cleaner.

MR. PETRO: Vacate that building. Now, obviously, you want to continue the use that they're using, so my whole plan is full of--okay, motion for final approval?

MR. LANDER: So moved.

MR. ARGENIO: I just want to say something before I vote and I'm going to ask Andy about this, I'm a minority shareholder in Hudson Valley Asphalt, which is next door and Argenio Brothers, which is next door. While I won't refrain from commentary on this because I have knowledge and information on both sites, I believe

I should do the same thing that I did with Stephenson Lumber, which is our neighbor on the other side when they came in front of this board and that is I abstained and I don't, I don't want to be the one to create a problem but that's what I did with Stephenson, I think that's fair. I didn't refrain from any commentary from Stephenson and I won't here, but I think the fair thing to do is to abstain.

MR. PETRO: Counsel?

MR. KRIEGER: I think it's a decision that ought to be made and is the proper decision cause if it were to, if it were to go to court, which I don't anticipate it happening, but if it were, his vote would be tainted.

MR. PETRO: How would it be tainted, just so I know?

MR. KRIEGER: Because he's a neighboring property owner and he's considered to have an interest, presumed to have an interest.

MR. ARGENIO: This even goes to the next level in that what Andy said is accurate for Stephenson's and Yonkers Contracting, additionally the firm of Hudson Valley Asphalt, which I'm a minority shareholder is in direct competition with Plaza Materials, which is a division of Yonkers Contracting and operates the asphalt plant next door. Mr. Chairman, I don't want to muddy the waters, but I think it's the fair thing to do unless counsel were to firmly instruct me differently.

MR. KRIEGER: No, and counsel will not, being as you have now disclosed the competition status that you're right, that's an even more compelling argument.

MR. CARTER: We don't have a problem with that.

MR. PETRO: That's my point a hundred percent, if the person sitting on the planning board was hindering the applicant, I can understand it. But in this case, we're forwarding them by sending them to the zoning board, who in their right mind would construe that as being a problem?

MR. SIRIGNANO: To the extent that he's disclosed the relationship, if we don't have any objection, I don't think there's a problem.

MR. PETRO: I agree with this fella here.

MR. EDSALL: Wouldn't an abstention not make the motion not pass anyway? So it still works.

MR. KRIEGER: Motion for final approval and he abstains if you don't have three affirmative votes.

MR. EDSALL: They're going to the ZBA anyway.

MR. KRIEGER: So what I'm saying is the abstention--

MR. PETRO: He still has to make the second.

MR. KRIEGER: Yes.

MR. ARGENIO: Didn't hear what you said.

MR. PETRO: I said that you still needed to make the second.

MR. PETRO: We have a motion for final approval and I need a second, so you can't abstain from that, you can abstain from voting.

MR. ARGENIO: I'll second it.

MR. PETRO: Motion has been made and seconded that the New Windsor Planning Board grant final approval to the Yonkers Contracting Company, Inc. lot line change on Ruscitti Road. Is there any further discussion? If not, roll call.

ROLL CALL

MR. ARGENIO	ABSTAIN
MR. LANDER	NO
MR. PETRO	NO

MR. PETRO: At this time, you have been referred to the New Windsor Zoning Board for your necessary variances.

May 8, 2002

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If you can, if you're successful and receive those variances, place them on the map and if you wish to appear before this board again, we'll see you then.